

Evan G. Anderson, Bar No. 249,319
Evan@bviplaw.com
BRAND VENTURES IP LAW
2434 Lincoln Blvd., Floor 2
Los Angeles, CA 90291
Telephone: (310) 425-3428
Facsimile: (424) 750-9499

Attorneys for Plaintiff
Helmet Venture, Inc.
Tegol, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Helmet Venture, Inc. and Tegol, Inc.,

Plaintiff,

v.

Jafrum International,

Defendant.

Case No. 2:14-cv-01307

**PLAINTIFF HELMET VENTURE
INC.'S RESPONSE TO
DEFENDANT JAFRUM
INTERNATIONAL, INC.'S NOTICE
OF MOTION AND MOTION TO
DISMISS AMENDED COMPLAINT
AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT**

Helmet Venture, Inc. ("Helmet") and Tegol, Inc. hereby allege and aver based on knowledge as to its acts and based on information and belief as to the acts of others, as follows:

PRELIMINARY STATEMENT

1. As a preliminary matter, it should be noted that the present filed Motion was filed on October 31, 2014 as a result of counsel for Plaintiff relying on the date set forth in the Stipulated Motion to Extend the Time for the Response to the Defendant's Motion to Dismiss as the applicable due date for said Motion. Counsel for Plaintiff, as set for in the accompanying Second Motion to Extend

1 Time for the Response to the Defendant's Motion to Dismiss, made the initial
2 request due to significant extraneous circumstances that resulted in counsel for
3 Plaintiff being physically unable to leave his home and perform his normal day to
4 day duties.

5 2. The morning following the submission for the Extension of Time,
6 counsel for Plaintiff received medical test results that confirmed he was suffering
7 from a spinal condition that was more serious and more widespread than was
8 previously believed. Further, the spinal condition that counsel for Plaintiff was
9 diagnosed with on the morning of October 23, 2014 was by its nature a condition
10 that was susceptible to sudden worsening if counsel for Plaintiff participated in
11 normal or even certain limited physical activity.

12 3. Fearing what could result from any further damage, counsel for
13 Plaintiff decided that it was necessary to take the advice of his doctors and to the
14 full extent possible, refrain from any and all activities, even those activities that
15 required only sitting or standing, as any unnecessary use of the spine could have
16 resulted in increased pain and could potentially make any resulting damage more
17 serious and long-lasting.

18 4. To help alleviate the severe pain and the limitations on physical
19 activity that rendered counsel for Plaintiff effectively bed-ridden, a medical
20 procedure was scheduled for November 23, 2014 to address counsel the Plaintiff's
21 specific injury and the resulting impact said injury had on the long term health and
22 functionality of his spine.

23 5. On the advice of his doctors, counsel for Plaintiff decided that it was
24 necessary and from a medical perspective beneficial to his short term and long term
25 health to adhere from all works that was not absolutely necessary. Given that the
26 present Motion was the only deadline of note for which a substantive response was
27 due during the span of time from October 23, 2014 to October 31, 2014, counsel for
28 Plaintiff planned to refrain from any substantive work until it was time for the

1 present Response Motion to be due, the date for which he understood to be October
2 31, 2014.

3 6. Only upon referencing the Defendant's Motion to Dismiss on October
4 31, 2014, was it discovered by the counsel for Plaintiff that the stipulated to and
5 agreed to proposed new due date of October 31, 2014 was changed and replaced by
6 October 24, 2014.

7 8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 7. Plaintiff Helmet Venture and Plaintiff Tegol, Inc. disagree with the
10 interpretation of law and fact presented by Defendant Jafrum International Inc. in
11 its Second Motion to Dismiss for Lack of Subject Matter Jurisdiction.

12 8. First, an important fundamental question is raised by a careful analysis
13 of both of Defendants Motion to Dismiss. This question centers on the level of
14 scrutiny and analysis the Court used when it deemed the Defendant's First Motion
15 to Dismiss as Moot when they recognized an Amended Complaint with a Plaintiff
16 added to the case. As the first Motion to Dismiss raised the point that even in the
17 event of an attempt by the Plaintiff to add an additional party subsequent to their
18 Motion to Dismiss, the law does not allow for such an amendment nor does such an
19 amendment cure the jurisdictional deficiencies pointed to by the Defendant in the
20 First Motion to Dismiss that they filed.

21 9. When the Plaintiffs First Amended Complaint was submitted, and on
22 that basis, the Court ordered the First Motion to Dismiss dismissed as moot, the
23 filing of the Second Motion to Dismiss by the Defendant basically reflects the
24 position that the Court erred in dismissing the first Motion to Dismiss as the same
25 points are raised in both and the same law is used to construct the main argument is
26 both the First and Second Motion to Dismiss.

27 10. In ruling that the Amended Complaint rendered the First Motion to
28 Dismiss moot reflects a substantive position considered and decided by the court

1 that whatever issues may have existed before the Amended Complaint, the
2 Amended Complaint addressed those issues sufficiently and thus the basis for a
3 dismissal was no longer present.

4 11. As we will show through simple facts and evidence that were either
5 not mentioned or not referenced by Defendant, the Amended Complaint was never
6 necessary to create some form of absent subject matter jurisdiction as both parties
7 had an independent and effective basis for establishing subject matter jurisdiction at
8 the time necessary on the basis of the USPTO's Trademark Registration records.

9 I. **The Controlling Facts**

- 10 • On November 12, 2013, Jafrum International filed a Petition for
11 Cancellation against Helmet Venture's REBEL HELMETS Trademark
12 Registration.
- 13 • On November 18, 2013, Jafrum International filed a Cancellation
14 Proceeding with the USPTO's Trademark Trial and Appeal Board
15 ("TTAB") for the Cancellation of Helmet Venture's REBEL HELMET
16 Trademark Registration.
- 17 • On February 21, 2014, Helmet Venture, Inc. filed a Complaint against
18 Jafrum, Inc. for alleged trademark infringement as well as additional
19 claims for false designation of origin and unfair competition.
- 20 • On June 3, 2014, Jafrum International filed an Opposition against
21 Helmet Venture
- 22 • On June 3, 2014, Helmet Venture attempted to assign four REBEL
23 Trademark Applications and Registrations.
- 24 • On June 18, 2014, the USPTO issued an automatic update of
25 Assignment ownership for the REBEL HELMETS Trademark that is
26 Now owned by, and reflected as such on USPTO's TESS Database,
27 Tegol, Inc.

1 On June 18, 2014, as an apparent result of having been the subject of a
2 previously filed Notice of Opposition, the USPTO did not
3 automatically update the official trademark records for the REBEL
4 Trademark and as such did not officially recognize the assignment nor
5 was Tegol, Inc. noted on the TESS Database as the Current Owner of
6 record, and from that time to the present time, Helmet Ventures is still
7 noted and reflected as the official Owner of Record for the REBEL
8 Trademark Application.

- 9 • The USPTO Records indicate that Helmet Ventures additional two
10 REBEL Trademark Applications, REBEL ADVANCE
11 MOTORCYCLE GEAR and REBEL MOTORCYCLE BOOTS,
12 Reflect the processing of the Assignment on June 18, 2013.

13 *See Exhibit A for the USPTO Records for the REBEL Trademarks*
14

15 As the question before us appears to be focused on certain technicalities with
16 Trademark Ownership, as a technical matter, both the REBEL HELMETS
17 Registration the REBEL Trademark Application filed for by Helmet Ventures
18 continues to reflect the current owner of the trademark application in different areas
19 of the records that create a strong and credible impression of ownership by Helmet
20 Ventures at least up until the time necessary to effectively serve the Defendant in
21 the present matter.

22 As for the three other REBEL Trademarks, those marks were all recognized
23 and reflective of Helmet Ventures as the Owner of Record at the time that the
24 Original Complaint was served on Defendant, thus Helmet Ventures was the
25 technical owner of record and capable of serving as Plaintiff in the present case
26 without the inclusion of the latter added Plaintiff Tegol, Inc.

27 In fact, in the Cancellation Proceeding before the USPTO's TTAB for the
28 cancellation of Helmet Venture's REBEL HELMETS Trademark Registration

1 (4028949), Helmet Venture Inc. is still the named defendant which further
2 demonstrates that Tegol is not the officially recognized owner of the REBEL
3 HELMETS Trademark Registration.

4 II. Analysis

5 If the Defendant's Motion to Dismiss is based on the premise that there must
6 have been effective subject matter jurisdiction present in the Original Complaint,
7 then it is clear from the relevant facts and supporting materials that the requisite
8 ownership of the trademarks asserted by Helmet Venture in the original Complaint
9 was present at the time that service was completed and the Complaint was service
10 on Defendant.

11 The request for a trademark to be assigned to another party in itself does not
12 function as the moment in time that trademark rights are effectively conveyed to
13 another party. As there can be any number of defects, problems, and nullifying
14 components present in any request for trademark application and registration
15 assignments, the date on which the USPTO's official records reflect an official
16 transfer in the title of ownership is the earliest that one might be able to claim a
17 trademark had officially changed owners.

18 The continued reference to the original owner by the TTAB also suggests
19 that because the REBEL HELMETS trademark registration was already subject to
20 the jurisdiction of TTAB Trademark Cancellation proceeding initiated by the
21 Defendant prior to the commencement of the present action, the present litigation
22 action prevented the REBEL HELMETS Registration from being effectively
23 assigned to Tegol, Inc.

24 The TTAB, which has authority over the REBEL HELMETS trademark
25 registration now that it is being challenged, and they have discretion over issues
26 relating to its registerability and ownership until the Cancellation Proceeding
27 concludes. At the present time, the Defendant in the REBEL HELMETS
28

1 Trademark Cancellation Proceeding is still listed as Helmet Venture Inc. and there
2 is no mention of or reference to the Assignment.

3 Because the Defendant is currently in a USPTO TTAB Proceeding involving
4 Helmet Venture's REBEL HELMETS Trademark Registration, it should follow
5 that the Defendant is not opposed to being involved in a proceeding wherein the
6 current owner reflected by the Board is Helmet Ventures. Since there has been no
7 attempt to clarify or change the disposition of the respective parties in the
8 Cancellation action, then it seems that the Defendant does not object to this
9 characterization of ownership unless it is the central component of a Motion to
10 Dismiss.

11 Helmet Ventures was the trademark owner of record on June 18, 2014 and
12 after with respect to the REBEL HELMETS Trademark Registration, for which the
13 TTAB still reflects Helmet Venture as the named party to that action. As there was
14 sufficient subject matter jurisdiction at the time the original complaint was
15 submitted by the Plaintiff as well as at the time of effective service, then it would
16 follow that the Amended Complaint functioned just as the Court originally ruled, it
17 functioned to make the allegations of no subject matter jurisdiction moot.

18 Just as the court ruled the first Complaint was not impacted by the original
19 motion to dismiss, there is nothing in the record or in the Plaintiff's arguments that
20 indicate the Amended Complaint should be dismissed and therefore, the
21 Defendant's Motion to Dismiss should be denied.

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23 **Respectfully submitted,**
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BRAND VENTURES IP LAW
ATTORNEYS AT LAW
LOS ANGELES, CA

Dated: October 31, 2014

BRAND VENTURES IP LAW

By: /s/Evan Anderson
Evan G. Anderson

**Attorneys for Plaintiff,
Helmet Venture, Inc.
Tegol, Inc.**